

[SEE SIGNATURE PAGE FOR COUNSEL]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

AUGME TECHNOLOGIES, INC.,

Plaintiff,

v.

YAHOO! INC.,

Defendant.

Case No. C-09-5386 JCS

**JOINT CLAIM CONSTRUCTION
AND PREHEARING
STATEMENT (PATENT LOCAL
RULE 4-3) RE: YAHOO!
PATENTS**

Hon. Joseph C. Spero

YAHOO! INC.,

Counterclaim Plaintiff,

v.

AUGME TECHNOLOGIES, INC. and WORLD
TALK RADIO, LLC,

Counterclaim Defendants.

Pursuant to Patent L.R. 4-3 and the Court's June 30, 2011 Order extending the JCCS deadline, Plaintiff and Counterclaim Defendant Augme Technologies, Inc. ("Augme"), Counterclaim Defendant World Talk Radio, LLC ("WTR"), and Defendant and Counterclaim Plaintiff Yahoo! Inc. ("Yahoo!") hereby submit this Joint Claim Construction and Prehearing Statement presenting proposed claim constructions for U.S. Patent Nos. 7,512,622 ("the '622 Patent") and 7,640,320 ("the '320 Patent") (collectively, the "Yahoo! Patents").

I. PATENT L.R. 4-3(A): AGREED CONSTRUCTIONS

Section I of the chart attached as Appendix A contains the constructions of claim terms on which the parties agree.

II. PATENT L.R. 4-3(B): PROPOSED CONSTRUCTIONS OF DISPUTED TERMS

Section II of the chart attached as Appendix A contains each party's proposed constructions of the disputed claim terms, together with an identification of intrinsic evidence (references from the specification and prosecution history) and extrinsic evidence proffered by the parties in support of their constructions.

III. PATENT L.R. 4-3(C): TEN MOST SIGNIFICANT DISPUTED CLAIM TERMS FOR CONSTRUCTION

The parties agree that construction of the following terms will be most significant to the resolution of the case: "defining a set of metadata attributes"/"defining a set of metadata attribute types" (Term #2); "viewer" (Term #5); and "redirector file" (Term #11).

Yahoo! contends that the following term is also most significant to the resolution of the case: "associating metadata attributes from the set of metadata attributes with each of said plurality of media files" (Term #4).

Augme and WTR contend that the following terms are also most significant to the resolution of the case: "media file providers" (Term #1), "server hostname" (Term #9), and "playlist server," (Term #10). Augme and WTR further contend that construction of the following terms will facilitate resolution of the case: "compiling said plurality of media files" (Term #3), "ingest server" (Term #7), and "repository server" (Term #8).

Augme and WTR further state as follows: The asserted Yahoo! patents are unrelated, and do no share the same specification. In addition, to the ten terms identified above, Augme and WTR believe that there are a total of 12 terms that should be construed, six from each patent. Ten of the terms are listed above, and the additional two terms that Augme and WTR believe should be construed are “receiving by an ingest server the unique identifier to the digital content” (Term # 12) (which Augme and WTR contend is indefinite) and “provided by an Internet provider” (Term #6), both of which are included in Section II of Appendix A.

Yahoo! contends that none of the claim terms will be case or claim dispositive. Augme and WTR contend that certain terms will be claim dispositive. Those claim terms are identified in Section II of Appendix A.

IV. PATENT L.R. 4-3(D): ANTICIPATED LENGTH OF CLAIM CONSTRUCTION HEARING

The parties anticipate that they will require 3 hours for the claim construction hearing, with the time to be split evenly between Yahoo! and Augme/WTR.

V. PATENT L.R. 4-3(E): WITNESSES

A. Augme and WTR’s Statement

Augme and WTR may offer the expert testimony of Bobby Bhattacharjee, Ph.D. in support of Augme and WTR’s claim constructions, either through live testimony or by declaration. Dr. Bhattacharjee is an expert retained by Augme and WTR, and his CV is attached hereto as Appendix B.

Pursuant to Patent L.R. 4-3(b) and 4-3(e), the following is a summary of each opinion to be offered by Dr. Bhattacharjee in support of Augme and WTR’s claim construction, set forth in sufficient detail to permit a meaningful deposition of Dr. Bhattacharjee:

Dr. Bhattacharjee may proffer his opinion as to the level of ordinary skill in the art relevant to the Yahoo! Patents. Dr. Bhattacharjee may also proffer his opinion regarding the meaning to a person of ordinary skill in the art of certain claim terms and phrases appearing in the asserted claims of the Yahoo! Patents. Dr. Bhattacharjee may testify regarding how Augme and WTR’s proposed claim constructions are drawn from intrinsic evidence, extrinsic evidence, or the

1
2 education and experience of a person of ordinary skill in the art relevant to the Yahoo! Patents.
3 Dr. Bhattacharjee may also testify regarding Yahoo!'s proposed constructions and any intrinsic or
4 extrinsic evidence relied upon by Yahoo!. Dr. Bhattacharjee may support his testimony by
5 reference to the Yahoo! Patents, their prosecution history, dictionaries, and other extrinsic
6 evidence. Those claim terms and phrases about which Dr. Bhattacharjee may testify are indicated
7 in the attached Appendix A.

8 Dr. Bhattacharjee may proffer testimony concerning the background of the technology of
9 the Yahoo! Patents as it relates to the claim terms and phrases about which Dr. Bhattacharjee may
10 opine. Dr. Bhattacharjee's testimony may be provided during the technology tutorial to the
11 Court.

12 **B. Yahoo!'s Statement**

13 Yahoo! may offer the expert testimony of Gary J. Nutt, Ph.D. in support of Yahoo!'s
14 claim constructions, either through live testimony or by declaration. Dr. Nutt's CV is attached as
15 Appendix C.

16 Pursuant to Patent L.R. 4-3(e), the following is a summary of opinions that may be
17 offered by Dr. Nutt in support of Yahoo!'s claim constructions: Dr. Nutt may testify that the
18 construction proposed by Yahoo! for each disputed claim term or phrase set forth in Appendix A
19 is consistent with the usage in the Yahoo! Patents and by a skilled artisan in the relevant
20 timeframe. Dr. Nutt may support his testimony by reference to the Yahoo! Patents, their
21 prosecution history, the prior art, dictionaries, and other extrinsic evidence. Dr. Nutt may also
22 address Augme and WTR's proposed constructions, and may address the significance of any
23 intrinsic or extrinsic evidence relied upon by Augme and WTR.

24 Dr. Nutt may further testify regarding (1) the education and experience of a skilled artisan
25 at the time of the applications and thereafter; (2) the meaning of the terms and disclosures of the
26 Yahoo! Patents to a skilled artisan; and (3) how Yahoo!'s proposed claim constructions are drawn
27 from the education and experience of skilled artisans, the intrinsic evidence, and the extrinsic
28 evidence. Dr. Nutt may also provide a general overview of the patented technology for the Court.

Those claim terms and phrases about which Dr. Nutt may testify are indicated in Appendix A under the headings labeled "Evidence." Dr. Nutt may additionally testify about any of Augme's and WTR's proposed constructions.

Dated: July 15, 2011

Respectfully submitted,

By: /s/ Erica D. Wilson

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ATTESTATION OF E-FILED SIGNATURE

I, Daniel P. Muino, am the ECF User whose ID and password are being used to file this
Joint Stipulation. In compliance with General Order 45, X.B., I hereby attest that Erica D.
Wilson has concurred in this filing.

Dated: July 15, 2011

By: /s/ Daniel P. Muino
Daniel P. Muino